

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC 146
CO 27/2017

In the matter between:

THE REPUBLIC
(rep. by Hemanth Kumar)

Prosecution

and

ALBERT GEERS & ORS
(rep. by Anthony Derjacques)

Accused

Before: Govinden CJ
Heard: 13 April 2021
Delivered: 13 April 2021

RULING

GOVINDEN CJ

- [1] Upon the prosecution attempting to adduce a verbal admission of the accused person, allegedly given in the car on the way to the Sunset Hotel on the 31st of May 2017 in the morning, learned defence Counsel objected to its admissibility on the ground that it is hearsay evidence and hence not admissible. It is the case of the defence that the said statement which the accused made to the Police Servina that at a store found at his house which they were going to, contain cannabis plants on which he was doing experiment, is inadmissible as he was not properly cautioned and informed of his rights under the Constitution.
- [2] Given the objection the Court initiated a trial within a trial to test the admissibility if the said statement. It is law that before any admission made by an accused person to any

person in authority is brought into evidence, the prosecution bear the burden to show beyond a reasonable doubt that it is admissible in the sense that it was given in accordance with the Constitutional rights of the accused and that he was duly cautioned. Moreover, in the event of a retraction such as in this case, the prosecution also needs to prove that nothing was done that sapped the voluntariness of the statement in the sense that no fear, favour, intimidation or pressure or hope of advantage was given to the accused or upon any of his relatives in order for him to give the confession.

[3] The prosecution called two witnesses, Officer Alexander Cherry and Officer Pierre Servina. Both of them confirmed the utterance. However Officer Servina says that it was upon him asking the accused a question about the store that the accused made the admission, whilst Officer Cherry says that it was a spontaneous assertion from the accused person.

[4] The accused on the other hand whilst accepting that he made the utterance, said that it was prompted by Pierre Servina and that he was not cautioned or informed of his rights whether before or after he made the accession.

[5] I have carefully considered the submissions and the facts before me in the light of established principles when it comes to admissibility of verbal confessions given to Police Officers by accused. I consider first of all the chain of events leading to the accused being in the vehicle, in the presence of Officers Pierre Servina and Alexander Cherry. He had been arrested and cautioned at his residence before for the facts and circumstances relating to the first Count in this case. He was aware of the fact that he was being investigated of a criminal offence relating to controlled drug. In that sense if he volunteered to admit any incriminating facts to the Police, he was still under the caution rendered the day before. In that respect I find that the verbal admission to be a spontaneous one and not prompted by Officer Servina. I find that Officer Cherry to be a witness of truth in that respect and I accept his evidence as such. I consider that Officer Pierre Servina's evidence in that respect is erroneous and unreliable and I don't accept it. I also find that the accused person not to be a truthful witness when he said that his accession was prompted by a question from Servina.

[6] I find that the accused implicating himself on the 31st of May 2019, of which such implication was continuous Officer Servina did caution him and inform him of his Constitutional rights and he was imparted with a caution. Such imparts of rights and caution could only have been imparted after the admission given that there was no reason to exercise a caution before as they were simply going to a store as far as the Officers were concerned before the spontaneous assertion was made.

[7] I further find that there was no oppression, fear, intimidation or hope or favour offered to the accused person whilst he was in the car before he made the spontaneous utterance regarding the store. Therefore, I find that the statement is admissible in evidence for the truth of its content.

Signed, dated and delivered at Ile du Port on 13th day of April 2021.

R. Govinden CJ